

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Northern Maine Independent)
System Administrator, Inc.)

Docket No. ER07-1251-000

**NOTICE OF INTERVENTION AND COMMENTS
OF
THE MAINE PUBLIC UTILITIES COMMISSION**

The Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, Lisa S. Gast and Joshua E. Adrian, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully files this Notice of Intervention and Comments ("Comments") in the above-captioned proceedings regarding Northern Maine Independent System Administrator Inc.'s ("NMISA") August 3, 2007 filing ("August 3 Filing") of revisions to the NMISA Tariff and Market Rules. In support of its Comments, the MPUC states as follows:

I. PRELIMINARY STATEMENT

This Notice of Intervention and Comments is filed pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.212 and 385.214 (2007), and the Commission's August 9, 2007 Combined Notice of Filings #1, in which the Commission established August 24, 2007 as the date by which interventions and protests are to be filed.

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the

C.F.R. § 385.203 (2007):

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Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. *See* 35-A M.R.S.A. § 101 *et seq.* It is, therefore, a “state commission” under the Commission’s regulations, 18 C.F.R. § 1.101(k) (2007). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2), 18 C.F.R. § 385.214(a)(2) (2007), and respectfully requests that the Commission recognize the MPUC as an intervener in this proceeding, with all rights attendant thereto.

On April 13, 2007, NMISA submitted for filing and acceptance proposed revisions to the NMISA Tariff and to its Market Rules (“April 13 Filing”) in Docket No. ER07-744-000. On May 4, 2007, the MPUC filed a Notice of Intervention and Protest in that Docket, requesting that that the Commission reject the filing or, in the alternative,

suspend the rate to the full extent of the statutory suspension period and set the matter for hearing. The MPUC's request was based on the fact that the April 13 Filing was (1) deficient in that NMISA had not met its burden of proving that its proposal for a capacity requirement is just and reasonable, and (2) misleading in that NMISA suggested that the changes proposed will have "no rate impacts."¹

On June 4, 2007, the Commission issued its Order Rejecting Proposed Tariff Revisions Without Prejudice.² In its June 4 Order, the Commission agreed with the MPUC that NMISA had not met its burden of proving that its proposed revisions are just and reasonable, and it rejected the April 13 Filing without prejudice.

On August 3, 2007, NMISA filed the instant submittal, consisting of revisions to the NMISA FERC Electric Tariff Original Volume No. I ("Tariff") and to the NMISA First Revised Rate Schedule No. 2 ("Market Rules"). NMISA states that the primary purposes of its August 3 Filing are (i) to clarify and explicitly set forth the capacity obligation in effect in Northern Maine; (ii) to amend the sanctioning authority of the NMISA; (iii) to make changes necessary to accommodate changes in the New Brunswick market and Market Rules; and (iv) to implement various administrative revisions that have become necessary in order to conform the NMISA Tariff and Market Rules to changes that have occurred since they were filed with the Commission in 1999 and 2000.

In its August 3 Filing, NMISA noted the Commission's rejection of NMISA's April 13 Filing in Docket No. ER07-744-000, and it stated that it "remains firm in its belief that it was essential that the clarifications to the capacity obligations be made as

¹ See Notice of Intervention and Protest of the Maine Public Utilities Commission, Docket No. ER07-744-000, filed May 4, 2007, at 10-12.

² *N. Me. Indep. Sys. Adm'r, Inc.*, 119 FERC ¶ 61,231 (2007) ("June 4 Order").

soon as possible, but [] also recognize[s] that certain of its stakeholders wanted further deliberations about the capacity obligation issues.”³ NMISA also stated in its August 3 Filing that it began a collaborative process with the Northern Maine stakeholders including the extensive involvement of the MPUC Staff and discussions with the New Brunswick System Operator (“NBSO”) in order to address issues raised in filings before this Commission about the capacity obligation in Northern Maine, and it further stated that the process was driven by (1) the need to continue to ensure the reliability of the Northern Maine system and (2) to achieve this purpose at the lowest reasonable cost by avoiding unduly burdensome capacity requirements. NMISA engaged the services of a third-party to act as facilitator of the discussions among the stakeholders and with the MPUC.⁴

On August 9, 2007, the Commission issued its Combined Notice of Filings #1, setting August 24, 2007 as the date by which interventions and comments would be due. The MPUC has timely filed its Comments in accordance with the Commission’s Notice.

IV. COMMENTS

A. NMISA’s Proposal for a Capacity Obligation Has Merit But Needs Further Clarification and Revision

The new capacity obligation (contained in Market Rule 10) creates a requirement for competitive electricity providers (“CEPs”) and other load serving entities to secure capacity resources (referred to as Eligible Unforced Capacity) equal or greater to their coincident peak for each month of a capability period. The capacity resource must be expected to be totally or partially available at least 70% of the time and its capacity value

³ August 3 Filing, Transmittal Letter at 1.

⁴ *See id.* at 1-2.

may be derated based on the unit's operating characteristics and planned outages.

NMISA has the responsibility of determining the amount of the capacity obligation and whether designated capacity resources meet the requirements of the new Market Rule.

Six months prior to the commencement of the capability period, the NMISA establishes the capacity obligation, and four months before the commencement of the capability period, CEPs must provide evidence that they have secured resources to meet their capacity obligations. NMISA then determines whether the designated resources comply with the rule requirements. Once NMISA confirms compliance, the CEP capacity obligation is satisfied (although the CEP would have the obligation to replace a resource that no longer qualifies under the rule as capacity).

The MPUC understands from communications with NMISA that the intent of the proposed Market Rule is not to impose any other capacity obligation on CEPs. For example, if during the capability period a previously approved capacity resource experiences a forced outage, a CEP will not be required to secure replacement capacity (assuming that the resource continues to qualify as a capacity resource under the Market Rule). The MPUC also understands that the intent of the rule is to allow a CEP to purchase capacity from outside the region (e.g. the ISO-NE control area) without having to secure firm transmission through New Brunswick into northern Maine.

The MPUC supports in concept the structure of the new capacity obligation consistent with the intent of the rule as represented above. However, the MPUC is concerned that some of the language in the filing can be interpreted in a manner inconsistent with its understanding of the intent. Of significant concern is language added to several of the existing Market Rules (sections 6.1.5.1, 7.4.2.3, and 8.9.4) that

reference the NPCC C-13 and C-14 reporting requirements. This language, together with language in the new Market Rule 10, can be read to give NMISA authority to require a CEP to secure additional capacity if, for example, a weekly C-14 reports shows a deficiency due to a forced outage. The MPUC strongly opposes such authority in that it would require CEPs to, in essence, buy capacity twice.⁵ The MPUC is also concerned that language in the new Market Rule (section 10.2(d)(ii)) could be interpreted as requiring a CEP to purchase firm transmission through New Brunswick into northern Maine if the secured capacity resource is outside the region. Moreover, the use of the terms “firm energy” and “firm energy-only” are of concern in that they are not defined and could be interpreted as including some type of capacity obligation or other obligation that is not consistent with the understanding of how the new capacity obligation is intended to operate.

In addition, language in 10.3.4(b) provides the NMISA with excessive discretion in implementing the rule. The language of concern to MPUC is that the NMISA will “determine whether the capacity and other Resources designated by a CEP to meet its capacity obligation *is adequate and otherwise meets the requirements of NMMR #10.*”⁶ This language appears to give the NMISA the discretion to determine that a CEP has not met its capacity obligation because it is not adequate, *even if the CEP has followed all of the requirements of Market Rule 10.* A simple fix to this problem is to eliminate the

⁵ In addition, as discussed in the MPUC protest to the NMISA filing in ER07-744, the NERC and NPCC Reliability and Planning Protocols are not appropriately translated into a CEP capacity requirement because they are meant to apply for planning purposes to a broad control area, not to small sub-regions within control areas and not to individual suppliers. Requiring suppliers to acquire this excess capacity would translate directly into excessive prices for northern Maine customers. See MPUC Protest in Docket ER07-744 at 12.

⁶ NMMR 10.3.4(b) (emphasis added).

words “is adequate and otherwise.” This change will allow CEPs to know the full extent of its obligation in advance,⁷ and it will reduce uncertainties (which in turn may result in higher prices to cover the risk of such uncertainty) over the possibility that the CEP could be liable for additional charges imposed by NMISA if it concludes that the CEP’s capacity resources are not “adequate.”

The MPUC and NMISA have discussed specific language changes, and NMISA has committed to make an amended filing that includes those language changes by August 31, 2007. NMISA has also indicated that its filing will clarify that the intent of the Market Rules generally and the definition of “Firm Energy” in particular do not create any additional capacity requirements once a CEP has complied with the requirements of new Market Rule 10.

Accordingly, upon NMISA’s representations described above, the MPUC does not object to its amended filing having an effective date of September 1, 2007 as requested.

⁷ FERC has required changes to rules that give Independent System Operators too much discretion in imposing market mitigation or performing other regulatory functions. *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,196 at 61,605 (rejecting portions of the NYISO’s mitigation plan because certain features afford the ISO too much discretion to impose bid caps and do not provide enough specificity about the types of conduct that would be subject to mitigation).

V. **CONCLUSION**

WHEREFORE, the Maine Public Utilities Commission respectfully requests that the Commission accept its comments as stated hereinabove.

Dated: August 24, 2007

Respectfully submitted,

/s/ Lisa S. Gast

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 24th day of August, 2007.

/s/ Harry A. Dupre
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